

HONORABLE LONNY R. SUKO

Smith & Lowney, PLLC
2317 E. John Street
Seattle, WA 98112
(206) 860-2883

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

WILD FISH CONSERVANCY,)
)
Plaintiff,)
v.)
)
DIRK KEMPTHORNE, in his)
official capacity as Secretary of the)
Interior; U.S. FISH & WILDLIFE)
SERVICE; H. DALE HALL, in his)
official capacity as the Director of)
the U.S. FISH & WILDLIFE)
SERVICE; JULIE COLLINS, in her)
official capacity of the Leavenworth)
National Fish Hatchery Complex,)
Defendants.)

No. CV-05-181-LRS

STIPULATION AND
ORDER SETTLING
PLAINTIFF'S REQUEST FOR
ATTORNEYS' FEES AND COSTS

WHEREAS, in this matter Plaintiff Wild Fish Conservancy challenges the
Fish and Wildlife Service's compliance with the Endangered Species Act in
connection with its operations of the Leavenworth Fish Hatchery ("Hatchery"), and
also challenges the Fish and Wildlife Service's August 31, 2006 biological opinion
issued to evaluate the effects of the Hatchery on a bull trout, a species protected

STIPULATION AND ORDER SETTLING
PLAINTIFF'S REQUEST FOR ATTORNEYS'
FEES AND COSTS - 1

1 under the Endangered Species Act.

2 WHEREAS, on September 7, 2007, Plaintiff moved for partial summary
3 judgment on its claim that the 2006 biological opinion issued on the operations of
4 the Hatchery violated the Endangered Species Act and Administrative Procedures
5 Act.
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8 WHEREAS, on October 19, 2007, Defendants moved for a voluntary
9 remand and for a stay of all proceedings, including Plaintiff's motion for partial
10 summary judgment.
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12 WHEREAS, on November 19, 2007, the Court granted Defendants' motion
13 and remanded the August 31, 2006 biological opinion to the Fish and Wildlife
14 Service for further consideration.
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17 WHEREAS, Plaintiff has submitted a claim pursuant to Section 11(g) of the
18 Endangered Species Act, 16 U.S.C. § 1540(g), for costs and fees incurred in
19 litigating its challenge to the August 31, 2006 biological opinion issued on the
20 operations of the Hatchery.
21

22 WHEREAS, the parties agree that it is in the interest of the parties and
23 judicial economy to settle Plaintiff's claim for attorney fees and costs in this action
24 without protracted litigation; and
25

26
27 WHEREAS, the parties enter this Stipulation without any admission of fact
28 or law, or waiver of any claims or defenses, factual or legal;

29 STIPULATION AND ORDER SETTLING
PLAINTIFF'S REQUEST FOR ATTORNEYS'
FEES AND COSTS - 2

1 NOW, THEREFORE, the parties hereby Stipulate and Agree as follows:

2 1. Defendants agree to settle Plaintiff's claim for attorneys' fees and costs in
3 the captioned litigation for a total of \$45,000.00. Payment by check will be made
4 payable and mailed to Smith & Lowney, PLLC, 2317 E. John Street, Seattle, WA
5 98112, attn: Knoll Lowney.
6

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8 2. Defendants agree to submit all necessary paperwork to the Department of
9 the Treasury's Judgment Fund Office pursuant to 16 U.S.C. § 1540(g)(4) within ten
10 (10) business days of receipt of the signed court order approving this Stipulation.
11

12 3. Plaintiff agrees to accept the payment referenced in Paragraph 1 in full
13 satisfaction of any and all claims for litigation costs to which Plaintiff is entitled
14 for challenging the August 31, 2006 biological opinion, up through and including
15 November 26, 2007, and agrees that receipt of this payment from Defendants shall
16 operate as a release of their claim for all fees incurred in connection with Plaintiff's
17 challenge of the August 31, 2006 biological opinion on the Hatchery up through
18 and including November 26, 2007.
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22 4. By this Stipulation, Defendants do not waive any right to contest fees
23 claimed by Plaintiff or Plaintiff's counsel, including the hourly rate, in any future
24 litigation. Further, this Stipulation as to attorneys' fees and costs has no
25 precedential value and shall not be used as evidence in any other attorney fees
26 litigation.
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29 STIPULATION AND ORDER SETTLING
PLAINTIFF'S REQUEST FOR ATTORNEYS'
FEES AND COSTS - 3

1 5. All parties whose signature lines appear in this document have consented
2 to its electronic filing.
3

4 It is so stipulated.

5 SMITH & LOWNEY, PLLC

6
7 Dated: Sept. 24, 2008

s/ Brian A. Knutsen

8 Richard A. Smith, WSBA # 21788

9 Brian A. Knutsen, WSBA # 38806

10 Attorneys for Plaintiff

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11 Tel: (206) 860-2883; Fax: (206) 860-4187

Email: rasmithwa@igc.org; briank@igc.org
12

13 Dated: Sept. 24, 2008

RONALD J. TENPAS

14 Assistant Attorney General

15 United States Department of Justice

16 Environment and Natural Resources

17 Division

18 JEAN E. WILLIAMS, Chief

19 LISA L. RUSSELL, Assistant Chief

20 s/ J. Brett Grosko

21 Trial Attorney (Md. Bar)

22 United States Department of Justice

23 Environment and Natural Resources

24 Division

Wildlife and Marine Resources Section

25 Ben Franklin Station, P.O. Box 7369

26 Washington, D.C. 20044-7369

27 Tel: (202) 305-0342; Fax: (202) 305-0275

28 Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED. The parties'
2 joint motion for entry of stipulation and order, Ct. Rec. 125, is GRANTED.

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4 DATED: 9/29/08

s/Lonny R. Suko

5 LONNY R. SUKO

6 UNITED STATES DISTRICT JUDGE
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